



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 3679-97

3 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters Marine Corps dated 14 August 1997, a copy of which is enclosed and your rebuttal to the advisory opinion.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO  
1070  
JAM4

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF [REDACTED]  
[REDACTED] U.S MARINE CORPS

Ref: (a) Manual for Courts-Martial, United States (1995  
Edition), Part V  
(b) MCO P5800.8 [LEGALADMINMAN]  
(c) JAGINST 5800.7C [JAGMAN]

1. We are asked to provide an opinion regarding the appropriateness of nonjudicial punishment (NJP) imposed upon Petitioner on 23 September 1992. Petitioner requests BCNR remove this NJP from his OMPF and SRB.

2. We recommend relief be denied. Our analysis follows.

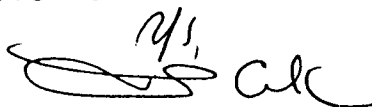
3. Under the reference, the NJP authority may impose punishment when he believes the preponderance of the evidence establishes the accused committed the offense charged. Absent clear evidence of an abuse of discretion, the NJP authority's findings should remain undisturbed. Petitioner does not deny the events which led to his NJP, however, he now requests the NJP be set aside because the charges and specifications failed to state offenses, and because of an alleged personality conflict between the petitioner and the NJP authority.

4. Although NJP may be set aside by the commander who initially imposed the punishment, his successor, or by the Marine's current commander, absent unusual circumstances, such action should only be taken within 4 months of the NJP and only then to correct a clear injustice. Petitioner received NJP more than 4 years before he requested his new battalion commander to set it aside. The NJP authority was required, by the reference, to consider and properly weigh all evidence presented at the NJP hearing. The matter of petitioner's guilt was a question of fact objectively addressed, properly considered, and subsequently resolved by the commander prior to imposing punishment. Petitioner was subsequently advised of his appellate rights and chose not to appeal the NJP. Petitioner presents no new information that tends to dispute the evidence previously considered by both the officer who imposed punishment, and by petitioner's subsequent commander who denied petitioner's original request that the NJP be set aside.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF GUNNERY SERGEANT [REDACTED]  
[REDACTED] U.S. MARINE CORPS

5. Petitioner's claim that his NJP offenses fail to state an offense is without merit. Paragraph 2007.3e of reference (b), and Appendix A-1-(c)(1) of reference (c) only require that the charge specify the article violated and provide a brief summary of the offense. There is no requirement that charges be drafted with the same detail and specificity that is required at courts-martial. Petitioner's charges were appropriately drafted for an NJP forum.

6. Petitioner's application does not provide a sufficient basis to disturb the NJP authority's findings of 23 September 1992. For the reasons set forth above we recommend relief be denied.

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T. P. COOK  
Lieutenant Colonel  
U.S. Marine Corps  
Head, Military Law Branch  
By direction of the  
Commandant of the Marine Corps